

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ARCHITECTURAL POLYMERS, :
INC. :

Plaintiff :

vs. :

JAMES KENNETH PASSENO, :

Defendant :

Civil Action No. 3:CV-03-0950

Senior Judge Richard P. Conaboy

FILED ELECTRONICALLY

REPLY TO COUNTERCLAIM

Jurisdiction and Venue

1. Admitted, except that it is denied that the Counterclaim states a claim upon which relief can be granted under the patent laws of the United States.

2. Admitted in part and denied in part. The allegation regarding Passeno is admitted. Plaintiff Architectural Polymers, Inc. is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 2 of Defendants' Counterclaim, and the same are therefore denied.

3. Admitted.

4. Denied.

Facts

5. Denied. Plaintiff Architectural Polymers, Inc. is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 5 of Defendants' Counterclaim, and the same are therefore denied.

6. Admitted.

7. Denied. Plaintiff Architectural Polymers, Inc. is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 7 of Defendants' Counterclaim, and the same are therefore denied.

8. Denied. Plaintiff Architectural Polymers, Inc. is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 8 of Defendants' Counterclaim, and the same are therefore denied.

9. Admitted.

10. Denied. Plaintiff Architectural Polymers, Inc. is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 10 of Defendants' Counterclaim, and the same are therefore denied.

11. Denied. Plaintiff Architectural Polymers, Inc. is without

knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 11 of Defendants' Counterclaim, and the same are therefore denied.

12. Denied. Plaintiff Architectural Polymers, Inc. is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 12 of Defendants' Counterclaim, and the same are therefore denied.

13. Denied. Plaintiff Architectural Polymers, Inc. is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 13 of Defendants' Counterclaim, and the same are therefore denied.

14. Admitted.

Claims for Relief

15. Plaintiff Architectural Polymers, Inc. incorporates herein by reference the averments of Paragraphs 1-14, above.

16. Denied.

17. Denied.

18. Denied.

WHEREFORE, Plaintiff Architectural Polymers, Inc. demands that the Counterclaim of Defendant James Kenneth Passeno and Counterclaim

Plaintiff K-Tel Corporation d/b/a Universal ThinBrick Systems, Inc. be dismissed with prejudice, and that the costs of this action be awarded to Plaintiff.

First Defense

20. Passeno's Patents are invalid under 35 U.S.C. § 102 based on prior art articles made and/or sold by, Poly Creations and/or other third parties in the United States of America ("U.S.A."), and/or public use of such articles in the U.S.A., more than twelve months prior to the filing dates of Passeno's Patents.

Second Defense

21. Passeno's Patents are invalid under 35 U.S.C. § 102 based on prior art articles made and/or sold by, James Kenneth Passeno and/or K-Tel in the U.S.A. and/or public use of such articles in the U.S.A., more than twelve months prior to the filing dates of Passeno's Patents.

Third Defense

22. Passeno's Patents are invalid under 35 U.S.C. § 102 based on prior art articles made and/or sold by Poly Creations and/or other third parties prior to the time Passeno's alleged inventions set forth in the Patents were made.

Fourth Defense

23. Passeno's Patents are invalid under 35 U.S.C. § 102 based on the fact that prior to the time Passeno's alleged inventions set forth in the Patents were made, Passeno's alleged inventions were patented and/or described in printed publications in the U.S.A. and/or in foreign countries.

Fifth Defense

24. Passeno's Patents are invalid under 35 U.S.C. § 103 in light of the prior art available at the time the alleged inventions set forth in the Patents were made, since the subject matter as claimed in the Patents would have been obvious to a person skilled in the art to which the alleged inventions related and do not constitute patentable inventions.

Sixth Defense

25. Passeno's Patents are invalid under 35 U.S.C. § 112 because the Patents do not particularly point out and distinctly claim the part, improvement, method, steps, or combination, which Passeno claims as his invention.

Seventh Defense

26. Passeno's Patents are invalid under 35 U.S.C. § 112 because the claims of the Patents, and each of them, are excessively vague and/or indefinite and/or do not distinctly point out and define the invention.

Eighth Defense

27. Architectural Polymers is not liable for the infringement of either of Passeno's Patents.

Ninth Defense

28. Passeno's Patents are unenforceable against Architectural Polymers.

Tenth Defense

29. Neither Passeno nor K-Tel provided public notice that its products were covered by Passeno's Patents as set forth in 35 U.S.C. § 287.

Eleventh Defense

30. K-Tel is neither a licensee nor an exclusive licensee of Passeno's Patents and has no standing to sue Architectural Polymers and/or collect costs, damages, and/or attorney's fees from Architectural Polymers.

Twelfth Defense

31. The formliners sold by Architectural Polymers do not infringe Passeno's Patents because Architectural Polymers' formliners do not include each and every element of any of the claims of Passeno's Patents.

Thirteenth Defense

32. The Counterclaim fails to state a claim upon which relief can be granted.

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Dated: October 6, 2003

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, upon the following counsel of record:

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Date: October 6, 2003